

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

No. 1:20-cr-183

vs.

Hon. Robert J. Jonker
United States District Judge

TY GERARD GARBIN,

Defendant.

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GOVERNMENT'S MOTION FOR SENTENCE REDUCTION
AND MEMORANDUM IN SUPPORT

May it please the Court, the United States moves to reduce the defendant's sentence by 36 months to recognize his substantial assistance to the government.

FACTS

1. Defendant Garbin pled guilty in January 2021 to conspiring to kidnap the Governor of Michigan. (R. 86: Indictment, PageID.573; Minutes of Change of Plea: PageID.759.) In August 2021, the government filed a motion for downward departure under USSG § 5K1.1 to recognize Garbin's substantial assistance. (R. 272: Motion, PageID.272). At that point in the proceedings, Garbin had testified twice before the grand jury, and provided information supporting new charges against his co-defendants. (*Id.*; R. 172: Superseding Indictment, PageID.961.)

2. On August 26, 2021, the Court granted the government's motion for a four-level downward departure, and sentenced Garbin to 75 months' imprisonment. (R. 300: Judgment, PageID.1758.)

3. In March 2022, this Court conducted a four-week trial of Garbin's co-conspirators. Garbin testified for the government, and was cross examined separately by all four defendants over the course of two days. (R. 594-95: Trial TR, PageID.5234-5577.) The jury deadlocked on the charges against defendants Fox and Croft. (R. 622: Declaration of Mistrial, PageID.6029.)

4. From August 9-23, 2022, this Court conducted a retrial of defendants Fox and Croft. Garbin testified and was cross-examined again over the course of two days. (R. 719-20: Minutes of Jury Trial, Aug. 16-17, PageID.9008-09.)

5. To facilitate his ongoing cooperation, Garbin has been housed in county jails since his arrest nearly two years ago. He has been moved from facility to facility to accommodate the government's trial preparations and facilitate separation from his co-defendants. He was at times housed in solitary confinement to protect him from retaliation.

6. On August 23, 2022, the jury found defendants Fox and Croft guilty on all counts of the superseding indictment in which they were charged. (R. 728: Minutes of Jury Trial, PageID.9039.)

7. Garbin will continue to serve his sentence in county facilities for the foreseeable future, as he is expected to testify in the State of Michigan's upcoming trials against those who provided material support for domestic terrorism. He may also be called by the U.S. Attorney's Office if contested factual issues arise at the sentencings of Fox and Croft. Should any of those eventualities come to pass, the

government expects to bring Garbin's future assistance to the Court's attention pursuant to Fed. R. Crim. P. 35(b)(2)(B).

LAW AND ANALYSIS

Upon the government's motion made within one year of sentencing, the court may reduce a sentence if the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person. Fed. R. Crim. P. 35(b)(1).

Garbin provided significant assistance leading to the convictions of Fox and Croft. He remained forthright in admitting his part in the conspiracy, and did not minimize his culpability. His testimony was corroborated by independent evidence, including undercover recordings and other witness accounts. As noted in the government's USSG § 5K1.1 motion, Garbin continues to serve his sentence under a substantial risk of retaliation, particularly from inmates sympathetic to Fox and Croft's terrorist ideology. Garbin's assistance has been remarkable for its timeliness, its duration, and the personal risk he assumed to fulfill his obligations under his plea agreement.

CONCLUSION

WHEREFORE, the government requests this Court grant the defendant a 36-month sentence reduction pursuant to Fed. R. Crim. P. 35(b).

Respectfully submitted,

ANDREW BYERLY BIRGE
Attorney for the United States,
Acting under Authority Conferred by
28 U.S.C. § 515

Dated: August 24, 2022

/s/ Nils R. Kessler
NILS R. KESSLER
CHRISTOPHER M. O'CONNOR
Assistant United States Attorneys
P.O. Box 208
Grand Rapids, MI 49501-2404
(616) 456-2404
nils.kessler@usdoj.gov